

circumstances or a medical emergency, notice must be given as soon as practical. Terms of leave may be modified as a woman’s changing medical condition dictates. If a woman desires to return earlier than agreed, an employer must reinstate her within two business days of her notice.

Are employers required to post a notice to employees advising them of their rights to pregnancy disability leave or transfer?

Yes. All employers shall provide notice to their employees of the right to request pregnancy disability leave or transfer and shall post an appropriate notice in a conspicuous place where employees tend to congregate. Employers who have employee handbooks are required to include information about pregnancy leave rights in their handbooks each time the handbooks are printed or updated. Those employers subject to CFRA may include both pregnancy disability leave and CFRA leave requirements in a single notice.



State of California
Department of Fair Employment & Housing
2014 T Street, Suite 210
Sacramento, CA 95814

Facts on Pregnancy Discrimination

The Fair Employment and Housing Act (FEHA), Calif. Gov. Code sections 12926(p), 12940, and 12945 contain provisions relating to pregnancy discrimination. The Fair Employment and Housing Commission’s (FEHC) interpretation of these provisions is set out in sections 7291.2 through 7291.16 of its regulations. These provisions cover all employers of five or more employees, or one employee in harassment complaints.

In addition to the pregnancy disability leave requirements of the *Fair Employment and Housing Act*, employers of fifty or more employees may have additional obligations under the *California Family Rights Act (CFRA)* or the federal *Family Medical Leave Act (FMLA)*. Refer to the Department’s *California Family Rights Act* brochure for more information.

The following information addresses the most frequently asked questions regarding pregnancy.

LEAVE REQUIREMENTS

How much leave must an employer provide for pregnancy?

An employer must provide up to four months disability leave for pregnant women. If more than four months of leave is provided for other types of temporary disabilities, the same leave must be made available to women who are disabled due to pregnancy, childbirth, or a related medical condition.

Must pregnant employees actually be disabled to qualify?

Pregnancy leave is required only when a woman is actually disabled. This includes time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth and any related medical condition.

Must a woman be completely incapacitated or confined to her bed to qualify as disabled by pregnancy?

**For more information,
contact the Department
toll free at:
(800) 884-1684**

**Sacramento area & out-of-state
(916) 227-0551**

**TTY Number
(800) 700-2320**

**or visit our website at:
www.dfeh.ca.gov**

No. As a general rule, a woman must be unable to perform one or more essential functions of her job without undue risk to herself, successful completion of her pregnancy, or to other persons. The medical opinion of the woman’s physician or her health-care provider will determine whether she is disabled by pregnancy or a related medical condition.

Do the four months of disability leave have to be taken at one time?

No. Leave can be taken before or after birth or at any period of time the woman is physically unable to work because of pregnancy or a pregnancy-related condition. Periods of leave may be totaled in computing the four months required.

Are employers required to reasonably accommodate employees for pregnancy?

Yes. If an employee requests reasonable accommodation upon the advice of her health-care provider, an employer must provide reasonable accommodation for an employee for conditions related to pregnancy, childbirth or related medical conditions.

Are employers required to transfer employees to less hazardous or strenuous assignments?

Yes, if an employee’s health-care provider certifies the transfer is medically advisable and the request can be reasonably accommodated by the employer. An employer is not, however, required to create a position or displace another employee.

Does an employer have the option of transferring a pregnant employee to an alternative position if the employee’s health-care provider indicates that intermittent leave or a reduced work schedule is medically advisable and foreseeable based on planned medical treatment?

Yes. An employer may require the employee to temporarily transfer to an available alternative position, but that position must better accommodate recurring periods of leave than the employee’s regular job. Although the alternative position need not have equivalent duties, it must have an equivalent rate of pay and benefits, and the employee must be qualified for the position. Transfer to an alternative position may include

altering an existing position to accommodate the employee’s need for intermittent leave or a reduced work schedule.

Can periodic absences for a pregnancy-related illness of limited duration taken prior to an actual

leave be subtracted from the four months of pregnancy disability leave to which a woman is entitled?

Yes. However, if the employer does not subtract intermittent leave from other types of disability leave, it may not subtract from pregnancy leave.

May pregnancy disability leave be combined with other forms of leave?

Yes. Employees are entitled to take pregnancy disability leave in addition to any entitlement they might have to leave under CFRA. An employee could take four months pregnancy disability leave for her disability and be entitled to 12 weeks CFRA leave to bond with the baby, to bond with an adopted child, or care for a parent, spouse, or child with a serious health condition.

RETURN RIGHTS

What are a woman’s return rights if she returns to work no later than the end of the four-month disability leave period?

Upon granting pregnancy disability leave or transfer, an employer shall guarantee to reinstate the employee to the same position and shall provide the guarantee in writing upon the request of the employee.

Must a pregnant employee be returned to her same position even though, under the employer’s policy, disabled men taking leaves and women not disabled by pregnancy must return to whatever position happens to be open?

Yes.

Must an employer always reinstate the woman disabled by pregnancy to her same position?

No. An employer may reinstate her to a comparable position, but only if her same position is no longer available, such as in a layoff due to plant closure. Thereafter, the employer must offer a position that is comparable in terms of pay, location, job content, and promotional opportunities, unless the employer can prove by a preponderance of evidence that no comparable position exists.

What are a woman’s return rights if her disability leave extends beyond four months or if she takes elective leave following the period of disability?

If the employee takes a CFRA leave for bonding with the baby or bonding with an adopted child, or care for a parent, spouse, or child with a serious health condition, she has a right to return to either her original job or to a comparable job.

Otherwise, she is entitled to the same rights given to other employees who have taken leave for reasons not related to pregnancy.

Does a pregnant woman have to be returned to the same position if the temporary replacement is a far more satisfactory employee?

Yes. A woman is entitled to return to the same position even if during her absence the employer has identified performance deficiencies that existed prior to her leave.

BENEFITS

Is an employer required to pay for an employee’s health insurance while she is on leave?

An employer is not obligated to continue health insurance coverage under California pregnancy disability provisions unless the employer provides health insurance for employees on other forms of disability leave. If an employee is entitled to a disability leave under FMLA, an employer might be required to pay for health insurance benefits up to 12 weeks of leave.

Are employers required to provide special insurance coverage for pregnant women?

Employers with less than 15 employees are not required to provide specialized insurance coverage for pregnancy even if insurance is provided for other types of conditions or disabilities. However, employers with 15 or more employees are required to provide health insurance coverage for pregnancy on the same terms as it is provided for other types of conditions or disabilities. Failure to do so may be considered sex discrimination pursuant to section 12940(a) of the *Fair Employment and Housing Act*.

Can an employer force a woman to use her sick leave during the four-month disability leave period?

Yes. An employer may require an employee to use her accrued sick leave during the otherwise unpaid portion of her pregnancy disability leave.

Can a woman elect to use her sick leave and/or vacation leave during the disability period?

Yes. A woman may use whatever leave credits she has to receive compensation during an otherwise unpaid portion of her pregnancy disability leave.

Can sick leave and/or vacation credits be added to the four months disability leave, thereby extending the time away from work?

That is up to the employer. Such requests should

be answered in the same manner as similar requests by non-pregnant employees. An employee may, however, be entitled to additional leave under CFRA to bond with the baby, bond with an adopted child, or care for a parent, spouse, or child with a serious health condition.

Is a probationary employee entitled to pregnancy leave despite the fact that other temporarily disabled probationary employees receive none?

Yes. But the employer is not required to pay her benefits while she is on leave if other temporarily disabled probationary employees receive no benefits. An employer may, however, be required to pay benefits if the pregnancy leave is taken concurrently with leave taken under FMLA.

MISCELLANEOUS QUESTIONS

Can a pregnant woman’s employment be terminated because of performance problems?

Only in situations where employees would normally have their employment terminated.

Can a pregnant woman be terminated for excessive absenteeism?

No, as long as the absenteeism, intermittent leave, or leave on a reduced work schedule is related to her pregnancy, and time of absence is counted against but does not exceed the four-month leave requirement.

May an employer require an employee to obtain medical verification of her inability to work because of pregnancy?

Only if the employer requires such verification from other temporarily disabled employees. However, an employer may not require verification from other than the pregnant employee’s own doctor or health-care provider.

Can an employer require medical verification that continuing work will not be hazardous to the pregnant woman?

Yes, as long as it is done in the same manner as verification required for other types of disabilities.

What notice to an employer is required for going on or returning from leave?

If possible, an employee must provide her employer at least 30 days advance notice before pregnancy disability leave or transfer begins, the date the leave will commence, and the estimated duration of the leave. If 30 days advance notice is not possible due to lack of knowledge of when leave or transfer will begin, a change in